IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.437 OF 1999

Shri D.B. Patil .. Applicant

versus

Shri Shivdas Dharma Mane & Anr. .. Respondents

...

Applicant present in person.

Mr.M.L. patil for respondent no.1.

CORAM : D.G. KARNIK, J

DATED : 17th August 2006.

P.C.:

1. This revision application is directed against the judgement and order dated 1st February rejecting revision applicant's application made under Order 7 Rule 11(d) of the Civil Procedure Code.

2. Respondent no.1 filed a suit against the revision applicant for recovery of a sum of Rs.54,761.10 ps. The plaint was accompanied by an application for permission to sue as a pauper. The plaint and the application for permission to sue as pauper was lodged on 13th November 1984.

3. In the suit the defendant/revision applicant made an application under Order 11 Rule 7(d) of the Civil Procedure Code alleging that the suit filed by respondent no.1 was ex-parte barred by limitation and the plaint was liable to be rejected. By the impugned order the learned Joint Civil Judge held that the question whether the suit was barred by law of limitation was not a pure question of law but a mixed question of law and facts which required investigation at trial. He held that only after trial it would be decided whether the suit was barred by limitation. Hence the learned Judge dismissed the application for rejection of the plaint. That order is impugned in this revision application.

4. Respondent no.1 who is the original plaintiff, has in the plaint averred with the

defendant no.1 in the suit, fraudulently withdrew certain sums of money from the plaintiff's Bank account. He further averred that the money was withdrawn by forging the signature of the revision applicant on the cheques. He further averred that the revision applicant sent notice demanding money the revision applicant gave oral assurance to the plaintiff on 15th November 1981 to repay the money. The cause of action is thus, alleged to have arisen on 15th November 1981 when the revision applicant allegedly gave oral assurance for repayment of the money. The suit has been filed on 13th November 1984 i.e. within 3 years of the alleged assurance given by the revision applicant. If the averments made in the plaint about the cause of action are proved at the trial the suit would be within limitation. The question as to whether the revision applicant had given oral assurance of the repayment on 15th November 1981 as alleged in the plaint is a disputed question of fact. This question cannot be decided in an enquiry under Order 7 Rule 11 of the Civil Procedure Code. It cannot be said that the suit is ex-facie barred by law of limitation. In the circumstances, the learned Judge was right in rejecting the application.

5. For these reasons the revision application is dismissed with no order as to costs. Since the suit has been filed as far back as in the year 1981, it would be appropriate to direct expeditious disposal of the suit. Accordingly the Civil Judge, Senior Division, is directed to dispose of the suit expeditiously and in any event within a period of one year. A copy of this order be sent to the concerned Civil Judge, Senior Division.

(D.G. KARNIK, J)